

REMARKS

Claims 45, 48-49, 77, 79-81 and 88-99 are currently pending in the case. Claims 1-44, 46-47, 50-76, 78 and 82-87 were previously cancelled without prejudice. Claim 45 is currently amended. Claims 90-99 are newly added. No new matter is added. Support for the amendments and new claims can be found throughout the present disclosure, *e.g.*, at paragraphs [0073]-[0078] and [0126]-[0135] of the Specification and in Figures 13-16, as originally filed.

1. Claim Rejections - 35 U.S.C. § 103(a)

In paragraph 1 of the Office Action, claims 45, 48-49, 77, 79-81 and 88-89 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,316,576 ("Urbush") in view of U.S. Patent 6,442,786 ("Halm"). The Office action cites Urbush as disclosing a "a toothbrush comprising a handle (12), a head (18); the head is a conventional toothbrush connected to the handle by a neck element (14), and a mechanical vibratory device (portions 40,41,42,43) that causes the head to vibrate (via 21; Column 2 Lines 33-39). Regarding claim 77, the mechanical vibratory device is located in the region adjacent to the head (see Figures) and is operatively connected to an electric power source (Column 1 Lines 9-11; Column 2 Lines 38-39)." The Office Action acknowledges that Urbush does not include a head comprising movable elements and instead relies on Halm to supply the noted deficiency.

With respect to claim 45, Halm is cited as disclosing "a handle (1), a neck connected to the handle (unlabeled area where head 2 joins to handle 1, see Figures), a head (2) connected to the neck (see Figures) and having a rigid portion (6) having a first surface and a second surface (upper and lowermost respective surfaces of 6 as shown in Figure 19), and a movable portion (67; Column 10 Lines 58-60, Figures 18-21) having a first surface and a second surface (upper and lowermost respective surfaces of 67 as shown in Figure 19), wherein the rigid portion is non-movable relative to the neck and wherein the movable portion is movable relative to the neck (Figures 19-20; Column 8 Lines 16-19, Column 10 Lines 39-41), wherein the rigid portion comprises a plurality of first cleaning elements extending from the first surface of the rigid portion that are fixedly mounted to the rigid portion (4, see Figures 18-21), wherein the movable portion

comprises a plurality of second cleaning elements extending from the first surface of the movable portion that are fixedly mounted to the movable portion (also labeled 4, see Figures 18-21), a gap in the head positioned between the rigid portion and the movable portion (69, Column 10 Lines 45-54, gap being where material 10 is filled in, Figures 18-21), a resilient membrane for flexibly attaching the movable portion to the rigid portion (10), the membrane positioned in a part of the gap (throughout the gap, Figures 18-21), and a plurality of third cleaning elements (also labeled 4, Figures 18-21), each of the third cleaning elements mounted on the resilient membrane and connected to both the rigid portion and movable portion (Figures 18-21), wherein no portion of any of the third cleaning elements extends outwardly beyond the second surfaces of the movable and rigid portions under any condition (Figures 18-21)."

For the record, Applicants disagree that the combination of Urbush and Halm properly supports an obviousness rejection under 35 U.S.C. § 103 for previous claim 45 (as it was presented in the Reply of January 14, 2009). Specifically, under the mandates of *KSR v. Teleflex*, the invention of previous claim 45 (as it was presented in the Reply of January 14, 2009) was not obvious, as the resulting invention was more than a mere combination of known elements combined in a manner where each element performs its intended function. Urbush is directed to a simple vibratory handle for receiving a toothbrush. Halm, on the other hand, is directed to a manual toothbrush having a flexible tip portion designed to improve the reach of the tip portion during cleaning. However, when the elements are combined as recited in previous claim 45 (as it was presented in the Reply of January 14, 2009), the resulting toothbrush provides both movable and non-movable sections that, when subject to mechanical vibrations, provide an effective and unexpected cleaning effect as the non-movable and movable sections work independently of one another, but at that same time in concert with one another, to provide a superior cleaning effect.

Nonetheless, in order to expedite the prosecution of this application, claim 45 has been further amended to clarify the invention. Specifically, claim 45 is amended to recite that said rigid portion is "an upstanding wall that creates a peripheral frame having a central opening" and that said movable portion is "located within the central opening." As a result, "an annular gap" is formed in the head between said rigid portion and said

movable portion. No such arrangement is either disclosed or suggested in either Halm or Urbush. In essence, the invention of amended claim 45 is a toothbrush that has a central movable portion (resembling an island) that is flexibly connected to the non-movable rigid peripheral frame by a resilient membrane. The resilient membrane allows the central movable portion to flex as needed (away from the surface being cleaned) when used during brushing. Because the non-movable rigid frame, the movable central portion and the resilient membrane all have cleaning elements arranged thereon, a unique cleaning effect is achieved wherein the separate sets of cleaning elements work as three independent groups, but at that same time in concert to achieve wrap-around cleaning of the teeth.

This is something that is not achieved or achievable by the toothbrush of Halm. In all of the toothbrush embodiments disclosed in Halm, it is important to note that all of the movable portions of the heads are distal-most tip portions. The goal in Halm is to provide a toothbrush where the distal tip of the portion of the head can flex for a better reach and angle. This is very different than the invention of amended claim 45 that utilizes a movable central portion that results in a "wrap-around" effect. In fact, the invention of amended claim 45 is actually counterintuitive to what Halm is attempting to achieve with his toothbrush.

Therefore, it is believed that the rejection of claim 45 under 35 U.S.C. § 103 based on Urbush in view of Halm is overcome, and that claim 45 should be found allowable.

Claims 90-99 are newly added claims. It is believed that these claims are also patentable over the prior art of record for at least one or more of the reasons discussed above.

In view of the foregoing amendments and remarks, Applicants respectfully submit that the pending claims are now in condition for allowance, early notice of which is earnestly solicited.

Should any outstanding questions or issues remain, the Examiner is invited to contact Applicants' attorney at the telephone number below.

No fee is believed to be due for the filing of this Amendment and Response in addition to the RCE fee which is being filed herewith. However, the Director is hereby

authorized to charge any fees due, or credit any overpayments, to Deposit Account No. 03-2455.

Respectfully submitted,
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